

**DEED OF AGREEMENT**

**DEED IN RELATION TO AN AGREEMENT BETWEEN**

Glyn Cryer

and

Commonwealth of Australia,  
represented by  
Office of the Fair Work Building Industry Inspectorate

and

Nigel Hadgkiss

## CONTENTS

Date	2
Parties	2
Context	2
1. Interpretation	3
2. Resignation and other employment	3
3. Discontinuance of proceedings	4
4. Cessation of investigation	4
5. Inquiries protocol	4
6. No disparagement	5
7. Confidentiality	5
8. Return of property	5
9. Final monies	6
10. No admission of liability	6
11. Releases	6
12. Technical provisions	7
<u>Signatures</u>	9

## **DEED OF AGREEMENT**

**DEED IN RELATION TO AN AGREEMENT BETWEEN GLYN CRYER AND THE  
COMMONWEALTH OF AUSTRALIA REPRESENTED BY OFFICE OF THE FAIR WORK  
BUILDING INDUSTRY INSPECTORATE AND NIGEL HADGKISS**

### **DATE**

The Deed is operative from the date of execution by all parties.

### **PARTIES**

This Deed is made between and binds the following parties:

**Glyn Cryer**

(the employee)

**Commonwealth of Australia, represented by  
Office of the Fair Work Building Industry Inspectorate**

(the employer)

**Nigel Hadgkiss**

(Mr Hadgkiss)

### **CONTEXT**

This Deed is made in the following context:

- A. On 29 November 2010 the employer employed the employee as an ongoing Senior Executive Service Band 1 employee.
- B. On 21 October 2013 Mr Hadgkiss was appointed as the Director of the employer, and is the Agency Head for the purposes of the *Public Service Act 1999*.
- C. On 28 October 2014 Mr Hadgkiss notified the employee that he had (in his capacity as the Agency Head) instituted an investigation to establish whether the employee had breached the Australian Public Service Code of Conduct ('the investigation').
- D. The employee vigorously denied, and continues to deny, any wrongdoing whatsoever or breach of the Australian Public Service Code of Conduct and maintains that Mr Hadgkiss and the employer began misconduct action because the employee had exercised his workplace rights.
- E. On or about 22 December 2014 the parties agreed that the employment relationship was no longer sustainable.
- F. The employer has at all times vigorously denied and continues to deny that its conduct, or that of the Agency Head, the employer's employees, servants or agents was in breach of any duty, requirement or obligation, whether under any written or unwritten law or otherwise, owed to the employee.

- G. Mr Hadgkiss has at all times vigorously denied and continues to deny that his conduct was in breach of any duty, requirement or obligation, whether under any written or unwritten law or otherwise, owed to the employee.
- H. The parties have agreed once and for all to resolve all matters potentially in dispute between them upon and subject to the terms and conditions below.

**THIS DEED WITNESSES AS FOLLOWS:**

**1. Interpretation**

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- a. Unless the contrary intention appears a term in bold type has the meaning shown opposite it:

<b>cessation date</b>	the earlier of: <ul style="list-style-type: none"><li>— last work day that falls within a period of 8 weeks after the date that this Deed is executed by all parties, or</li><li>— the date determined by clause 2.b of this Deed</li></ul>
<b>released people</b>	the employer and Mr Hadgkiss in his personal capacity and in his capacity as the Director of the employer
<b>investigation</b>	the investigation instituted on about 28 October 2014 by Mr Hadgkiss and the employer in relation to the employee's compliance with the Australian Public Service Code of Conduct
<b>relevant occurrences</b>	any matters arising out of or related to the employee's employment by the employer, and the cessation of his employment

- b. In this Deed wherever the context so requires, the singular shall include the plural and vice versa, and reference to one gender shall include any other gender.

**2. Resignation and other employment**

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- a. The employee hereby resigns from his employment with the employer, with effect from the cessation date.
- b. If, prior to the cessation date, the employee commences employment with another employer (including another Commonwealth Agency), then the employee's cessation date will be the last working day prior to commencement of his new employment.
- c. The employer does not require the employee to attend work or perform any duties for the employer in the period ending on the cessation date.
- d. The employer grants the employee permission to undertake any study-related activity in the period ending on the cessation date.
- e. For the sake of clarity, the employee hereby acknowledges that the employer has not granted him permission to undertake outside employment during his employment with the employer.

- f. The employer will pay to the employee full salary and entitlements during the period of employment ending on the cessation date (including, without limitation, wages, car allowance and superannuation).

**3. Discontinuance of proceedings**

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- a. Within 3 working days of the cessation date or payment of the final monies outlined at clause 8 (whichever is the later), the employee will notify the Fair Work Commission that the parties to proceeding C2014/8127 (*Cryer, Glyn v Office the Fair Work Building Industry Inspectorate T/A Fair Work Building & Construction & Hadgkiss, Nigel*) have resolved the dispute on terms acceptable to all parties, and provide evidence of same to the representatives of the employer and Mr Hadgkiss.
- b. In the event that the employee does not comply with clause 3.a, he consents to the employer filing a copy of the Deed with the Fair Work Commission as evidence of settlement.

**4. Cessation of investigation**

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On the date of execution of this Deed by all parties, the employer will cease the investigation of the employee's suspected misconduct and make no findings in respect of same. Subject to clause 12.3.b, the employer and Mr Hadgkiss will not take any further action whatsoever in relation to the investigation or the subject matter of same.

**5. Inquiries protocol**

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The parties agree that in the event that a person from outside the employer contacts the employer with inquiries about the employee's employment with the employer, the parties will use reasonable endeavours to deal with those inquiries in accordance with the following protocol:

- a. If the employee wishes to enable a third party to contact the employer in relation to his employment in the employer, he will refer the third party to Brian Corney, or another person agreed between the employee and the employer ('the designated referee');
- b. In answer to any query that is authorised by the employee, from a third party, about the employee's employment with the employer, the designated referee will say only:
- A. That the employee was employed with employer in about November 2010, as a Senior Executive Service Band 1 employee, working initially as the Executive Director, Public Affairs and later with responsibility for the Human Resources, Information Technology, Planning and Performance areas.
- B. That the employee resigned his employment with the employer in January 2015.

- C. If asked about the employee's performance the designated referee shall say "The employee's performance was rated as acceptable."
  - D. If asked for further information, the designated referee shall say "I am not in a position to provide further information".
  - c. If the employee provides to a third party the name and contact details of any other Commonwealth employee or office holder for the purpose of the Commonwealth employee:
    - A. performing the role of referee in relation to the employee's employment with the employer; or
    - B. providing information concerning the employee's employment with the employer;
- the Commonwealth employee or office holder nominated by the employee will give an honest reference or honest information based on their knowledge.

#### **6. No disparagement**

- a. The employee agrees that he will not disparage the employer or the released people.
- b. Subject to clause 5.c and 7.c of this Deed, the employer will use reasonable endeavours to ensure that its delegates, directors, officers, employees or agents do not disparage the employee.
- c. Subject to clause 7.c of this Deed, Mr Hadgkiss will not disparage the employee.

#### **7. Confidentiality**

- a. The employee, the employer and Mr Hadgkiss agree to keep confidential the terms and conditions of this Deed, the investigation and all circumstances leading to the investigation, save that they may disclose that information:
  - (i) to legal and financial advisers for the purpose of obtaining advice; or
  - (ii) where required to do so by law; or
  - (iii) with the agreement of the other parties.
- b. The parties note that the employer is bound by the *Privacy Act 1988* in respect of personal information about the employee in its possession, custody or control.
- c. For the avoidance of doubt, nothing in this Deed precludes disclosure of any information to the Parliament or a Parliamentary Committee where there is an obligation to make such disclosure (and only to the extent necessary to comply with that obligation).

#### **8. Return of property**

Within two weeks of execution of this Deed the employee will deliver to the employer (care of \_\_\_\_\_) all property of the employer in the

employee's possession, including but not limited to any identity cards, building access devices, IT and communications equipment or media, papers or motor vehicles. At that time                      will provide the employee with any personal effects left by the employee at the employer's premises.

#### **9. Final monies**

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Within 2 weeks of the cessation date the employer will pay the employee's net accrued final entitlements into the account previously nominated by the employee for salary purposes.

#### **10. No admission of liability**

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The parties acknowledge that the parties' agreement to enter into this Deed is made without any admission of liability whatsoever on the part of the parties or the released people (or any of them).

#### **11. Releases**

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- a. The employee accepts the employer's agreement to enter into this Deed in full and final satisfaction and settlement of any and all actions, suits, claims or demands of any nature that he now has or may have in the future against the Commonwealth and the released people (save and except for any entitlement arising under the *Safety, Rehabilitation and Compensation Act 1988* or in relation to superannuation, or any action taken pursuant to clause 12.3.b), for loss or damage sustained by him as a result of the relevant occurrences.
- b. The employee agrees that except for any entitlements arising under this Deed or the *Safety, Rehabilitation and Compensation Act 1988* or in relation to superannuation or any action taken pursuant to clause 12.3.b), he will not take any action of any kind whatsoever relating to the relevant occurrences, including (but not confined to) any action by way of application, request, complaint, grievance or disputation, with any person, court, tribunal, commission or agency, including the employer.
- c. Other than in relation to enforcement of this Deed, matters arising under the *Safety, Rehabilitation and Compensation Act 1988* or in relation to superannuation or any action taken pursuant to clause 12.3.b, and subject to the employer complying with its obligations under clauses 2, 4 and 9, the employee releases the released people from all actions, proceedings, claims and demands whatsoever that he now has or may in the future have against them or any of them for loss or damage sustained by him as a result of or arising out of the relevant occurrences.
- d. Other than in relation to enforcement of this Deed, the employer hereby releases the employee from all actions, proceedings, claims and demands whatsoever that it now has or may in the future have against the employee for loss or damage sustained as a result of or arising out of the relevant occurrences.

- e. Mr Hadgkiss agrees that except for any entitlements arising under this Deed, he will not take any action of any kind whatsoever relating to the relevant occurrences, including (but not confined to) any action by way of application, request, complaint, grievance or disputation, with any person, court, tribunal, commission or agency, including the employee.
- f. Other than in relation to enforcement of this Deed and any action taken pursuant to clause 12.3.b, Mr Hadgkiss hereby releases the employee from all actions, proceedings, claims and demands whatsoever that he now has or may in the future have against the employee for loss or damage sustained as a result of or arising out of the relevant occurrences.
- g. Except for any entitlements arising under this Deed or the *Safety, Rehabilitation and Compensation Act 1988* or in relation to the employee's superannuation, this Deed shall be and operate as an absolute bar and defence to any further action, suit, claim or demand commenced or made by the employee or the employer or Mr Hadgkiss in respect of the relevant occurrences and may be pleaded as such to any action, suit, claim or demand so commenced or made.

## **12. Technical provisions**

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### **12.1. Deed freely entered**

The parties acknowledge that:

- a. they enter into this Deed freely and voluntarily based upon their own information, legal advice and investigation;
- b. they are not executing this Deed as a result of, by reason of, or in reliance upon any promise, representation, advice, statement or information of any kind or nature whatever given or offered; and
- c. it is their intention to, and they do, fully, finally, absolutely and forever settle according to the provisions of this Deed.

### **12.2. Entire Agreement**

This Deed contains the entire agreement between the parties and supersedes any earlier agreements made or existing between the parties associated with or arising out of the relevant occurrences.

### **12.3. Rights reserved**

The Parties agree that in the event of any breach by any party of any or all of the terms of this Deed:

- a. the other party reserves their rights in respect of pursuing any or all of the remedies available to them in law and/or equity; and
- b. without limiting clause 12.3.a, in the event of a breach by the employee, the employer reserves the right to re-commence the investigation of the employee's suspected misconduct and make findings in respect of same, provided that:



- A. Before the investigation is so re-instituted, the employer will give the employee four weeks' written notice prior to re-commencing the investigation, with a written basis for its conclusion that the employee has breached the deed; and
- B. The employee reserves his rights in respect of challenging the employer's conclusion that he has breached the deed.

**12.4. Deed binds executors and assignees**

The covenants and acknowledgments in this Deed shall bind the executors, administrators and assignees of the employee and Mr Hadgkiss and are made and shall operate for the benefit of the employee and the released people.

**12.5. Severance**

If any of the provisions of this Deed are declared or determined by any court to be invalid, unenforceable or illegal at law, those provisions shall be ineffective and severable from this Deed, and the validity of the remaining provisions is not affected by the invalidity of those provisions.

**12.6. Applicable laws**

This Deed shall be construed in accordance with the laws for the time being of the State of Victoria and the parties hereby submit to the jurisdiction of the Courts of the State of Victoria and the Courts empowered to hear appeals from the Courts of the State of Victoria.

**12.7. Execution by counterparts**

This Deed may be executed in any number of counterparts and all those counterparts shall be taken together to constitute one and the same instrument.

**SIGNATURES**

EXECUTED AS A DEED:

SIGNED by:

)

)

Glyn Cryer

)

*Signature*

*Date*

In the presence of:

(Name of witness)

SIGNED for and on behalf of the  
Commonwealth of Australia,  
represented by the Office of the  
Fair Work Building Industry  
Inspectorate by

)

)

)

*Signature of witness*

(Name of signatory)

In the presence of:

*Signature*

*Date*

(Name of witness)

SIGNED by:

)

)

Nigel Hadgkiss

)

In the presence of:

)

)

*Signature of witness*

*Signature*

*Date*

(Name of witness)

)

*Signature*

*Date*

**SIGNATURES**

EXECUTED AS A DEED:

SIGNED by:

)

)

Glyn Cryer

)

Signature

Date

In the presence of:

(Name of witness)

Signature of witness

SIGNED for and on behalf of the  
Commonwealth of Australia,  
represented by the Office of the  
Fair Work Building Industry  
Inspectorate by

)

)

)

(Name of signatory)

Signature

In the presence of:

(Name of witness)

SIGNED by:

)

)

Nigel Hadgkiss

)

Signature

Date

In the presence of:

)

)

(Name of witness)

S

Date